

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: XO NETWORK SERVICES, INC., AND XO COMMUNICATIONS SERVICES, INC.	DOCKET NOS. SPU-04-19 WRU-04-48-3747 (TCU-03-17)
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**ORDER APPROVING TRANSFER OF CERTIFICATE AND
GRANTING WAIVER**

(Issued October 6, 2004)

On April 13, 2004, the Utilities Board (Board) issued a certificate of public convenience and necessity, Certificate No. 0280, pursuant to Iowa Code § 476.29(9) to XO Network Services, Inc. (XO Network). The certificate authorizes XO Network to furnish local telephone service in the exchanges as shown by its tariffs as currently and subsequently approved.

On July 23, 2004, XO Network and XO Communications Services, Inc. (XO Communications), jointly filed a request to transfer Certificate No. 0280 to XO Communications. In support of their request, the applicants state that they are both wholly-owned subsidiaries of XO Communications, Inc.

On August 30, 2004, the Board issued an order docketing this proceeding for further investigation. In that order, the Board required that the applicants file a request for waiver of subrule 199 IAC 22.23(2), as well as documentation from the Iowa Secretary of State reflecting the registration of XO Communications. On

August 26, 2004, XO Communications filed a copy of its registration as well as a request for waiver of Board subrule 22.23(2). The waiver request was identified as Docket No. WRU-04-48-3747.

Iowa Code § 476.29(2) authorizes the transfer of a certificate upon approval by the Board. The Board has reviewed the information submitted by XO Communications on July 23, 2004, and August 26, 2004, and finds the necessary technical, financial, and managerial ability to provide local exchange service has been demonstrated. The Board finds it is in the public interest to approve the transfer of the certificate of public convenience and necessity of XO Network to XO Communications and that no customers will be affected by the transfer.

XO Communications has also requested a waiver of 199 IAC 22.23(2) to allow the transfer of the customer base of XO Network to XO Communications without first obtaining each customer's authorization and verification. The subrule requires individual customer verification to change the customer's local or long distance provider.

Rule 199 IAC 1.3 states that the Board may grant a waiver if it finds based upon clear and convincing evidence that the application of the rule would pose an undue hardship and would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver.

The Board finds that the verification requirement is not specifically mandated by statute or other provision of law under the circumstances presented. Iowa Code § 476.103 (2003) gives the Board the authority to promulgate rules "to protect consumers from unauthorized changes in telecommunications services." Subrule 22.23(2) implements the statutory prohibition against unauthorized transfers. The rule is designed to prevent fraudulent transfers of customers. Where the transfer is part of a corporate restructuring, the Board finds that statutory verification is not required.

The Board finds substantially equal protection of public health, safety, and welfare will be afforded by means other than the waived rule. The transaction is the merging of companies within a corporate structure, and in a competitive environment, customers have alternatives if they are not satisfied with the service of XO Communications. For the above reasons, the Board will waive the provisions of 199 IAC 22.23(2) as requested by XO Communications.

IT IS THEREFORE ORDERED:

1. The request for the transfer of the certificate of public convenience and necessity, identified as Certificate No. 0280, from XO Network Services, Inc., to XO Communications Services, Inc., filed on July 23, 2004, is approved as described in this order.

2. The request for waiver of 199 IAC 22.23(2), filed by XO Communications Services, Inc., on August 26, 2004, identified as Docket No. WRU-04-48-3747, is granted as described in this order.

3. An amended Certificate No. 0280 is issued to XO Communications Services, Inc., concurrently with this order. Under this certificate, XO Communications Services, Inc., will be allowed to provide local exchange service as shown by its tariff, identified as TF-04-297, as currently and subsequently approved.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 6th day of October, 2004.